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No. 90-730

In The

Supreme Court of the United States

October Term, 1990

JERRY LADNER,

Petitioner,

v.

JOYCE ELIZABETH DANIELS JOHNSON
and CLAUDE WAYNE DANIELS,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of The State Of Mississippi

BRIEF OF RESPONDENTS IN OPPOSITION

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STATEMENT OF CASE

In support of his petition, the putative father alleges that he had a "significant, enduring and developed relationship with his child." However, there has been no finding by any lower court of any such relationship, and the record is totally devoid of any evidentiary proof to support such assertion. In his trial court pleadings, the putative father makes some factual allegations which might be argued to support such a conclusion, but these

allegations are denied in Respondents' pleadings and are, therefore, not properly before this court.

Throughout the course of this litigation, there was no testimony or other evidence presented except the results of HLA Blood Test. The only uncontroverted facts are that Respondent, Joyce Elizabeth Daniels Johnson lived with Petitioner and his wife, from July, 1977 to July, 1979. At the time of conception, which was April-May, 1977, Respondents, Joyce Johnson and Claude Wayne Daniels, lived together as husband and wife. She later moved to the home of her father, taking the child, who was approximately one and one-half (1½) years old at the time. Petitioner was known only as the child's godfather and was asked at various times to babysit with the child at the home of the Petitioner and his wife. Subsequent to Respondent moving out of Petitioner's home in 1979, Respondent continued to allow Petitioner to visit the child, but she denied that he provided any support for the child.

The issues of equal protection and due process were not raised below until the Petition for re-hearing was filed in the Mississippi Supreme Court.

ARGUMENT IN OPPOSITION TO GRANTING OF WRIT

I. THE APPLICATION OF MISSISSIPPI CATCH ALL STATUTE OF LIMITATION DOES NOT DENY THE PUTATIVE FATHER CONSTITUTIONAL PROTECTION UNDER THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE UNITED STATES CONSTITUTION.

A. THE DUE PROCESS ARGUMENT

A PUTATIVE FATHER SEEKING TO BE DECLARED THE LEGAL FATHER OF A CHILD BORN DURING WEDLOCK DOES NOT ASSERT A "LIBERTY INTEREST" SUFFICIENT TO REQUIRE DUE PROCESS PROTECTION.

In the case at bar, the facts show Petitioner waited almost eight (8) years before he filed his action and in this case he does not seek to legitimate the child, but to illegitimate the child. This leads to the ultimate question. Does a putative father have an open ended Constitutional right to illegitimate a child for nothing more than the self-serving purpose of having the child carry his name? Petitioner argues that the application of the 6 year "catch all" statute of limitations to his claim denies him due process as a putative father. This argument is predicated on the assumption that Petitioner, as the putative father, has a constitutionally protected liberty interest in being declared the natural father of the child. In defining the parameters of the due process clause, this court in *Michael H. v. Gerald D.*, 491 U.S. ___, 105 L.Ed.2d 91, 109 S.Ct. 2333 (1989) stated:

> . . . we have insisted not merely that the interest denominated as a 'liberty' be 'fundamental' (a concept that, in isolation is hard to

objectify), but also that it be an interest traditionally protected by our society. 105 L.Ed.2d, at p. 105.

In that case, a putative father sought to have a California statute declared unconstitutional for denying his due process rights as a putative father. The statute in question provided that (1) the child of a married woman cohabiting with her husband is presumed to be a child of the marriage where the husband is not impotent or sterile and (2) the presumption may be rebutted by blood tests but only if motion for such blood tests is made within 2 years from the child's birth. A liberty interest was claimed by the putative father based on biological fatherhood plus an established parental relationship. This court held that the putative father's substantive due process claim failed, because the power of a natural father to claim paternity of a child born into a woman's existing marriage with another man, and to assert parental rights over such a child, is not so firmly embedded within society's traditions as to be a fundamental right qualifying as a liberty interest. Similarly, in this case, where the evidence can support a finding of no more than biological fatherhood, Petitioner has failed to establish a liberty interest protected by the due process clause.

B. THE EQUAL PROTECTION CLAIM

THERE IS A RATIONAL BASIS FOR DISTINGUISHING BETWEEN THE LIMITATIONS PERIOD APPLICABLE TO THE CHILD AND/OR MOTHER'S RIGHT TO CLAIM SUPPORT AND THE LIMITATIONS PERIOD APPLICABLE TO A PUTATIVE FATHER'S ACTION TO BE DECLARED THE LEGAL FATHER OF A CHILD BORN IN WEDLOCK.

Petitioner claims his equal protection rights were violated in that the 6 year "catch all" statute of

limitations was applied to his claim as a putative father while different and more lenghty limitations periods apply to the claims of the mother and claims on behalf of the child. (Secs. 15-1-49, 93-9-9 Miss. Code Ann.) He argues that such "gender based" discrimination is a violation of equal protection. It is first noted that the distinction here is not of males vs. females, but of putative fathers as a class vs. natural mothers and legitimate or illegitimate children as a class. This court has heretofore recognized that such distinctions can survive equal protection scrutiny. *Mills v. Habluetzel*, 456 U.S. 91 (1982).

> Therefore, in support suits by illegitimate children more than in support suits by legitimate children, the state has an interest in preventing the prosecution of stale or fraudulent claims, and may impose greater restrictions on the former than it imposes on the latter. Such restrictions will survive equal protection scrutiny to the extent they are substantially related to a legitimate state interest. 456 U.S. at p. 98,99.

Since the claimant in the *Habluetzel* case was an illegitimate child born out of wedlock, this Court found that the one year Texas statute of limitations was not substantially related to the State's interest in avoiding the litigation of stale or fradulent claims.

The state has an interest in promoting family harmony and stability. The state further has an interest in the early determination of paternity questions and the prompt determination of parental responsibility. The continuation of a stable, continuous and harmonious family environment for the rearing of children is a substantial state interest. *Michael H. v. Gerald D., supra.*

> Where, however, the child is born into an extant marital family, the natural father's unique opportunity conflicts with the similarly unique opportunity of the husband of the marriage; and it is not unconstitutional for the State to give categorical preference to the latter. 105 L.Ed.2d, at p. 109.

Obviously, with respect to the child and its mother, the state has an interest in seeing that the child is adequately cared for and supported during its minority and does not become a public charge. The 18 year statue of limitations in favor of the mother and child rationally promotes this state interest. (Sec. 93-9-9 Miss. Code Ann.)

In Mississippi, the rule as to presumption of paternity is established by a long line of Supreme Court cases and, it can be summarized by the wording of *Brabham v. Brabham*, 483 So.2d 341 (Miss. 1986):

> "The presumption that a child born in wedlock is a legitimate child is one of the strongest presumptions known to the law, (cites omitted) and may be rebutted only by proof beyond a reasonable doubt that the husband is not the father." (cites omitted), 483 So.2d at p. 342.

As the Court stated in *Michael H. and Victoria D. v. Gerald D., supra*:

> "Of course the conclusive presumption not only expresses the State's substantive policy but also furthers it, excluding inquiries into the child's paternity that would be destructive of family integrity and privacy." 105 L.Ed.2d, at p. 103, 104.

The evidence in this case can support a finding of no more than that Petitioner is the biological father. There is no evidentiary basis for a finding that Petitioner has

attempted to provide any of the comforts or incidents of fatherhood to the child or provided any support to the child. There is further no evidence of any affection or bonding between Petitioner and the child to justify an invasion of the child's existing family relationship.

Since the application of the 6 year Mississippi statute to limitations to Petitioner's assertions of his rights pursues a legitimate end by rational means, Petitioner has not been denied equal protection.

Respondent cites *Caban v. Mohammad*, 441 U.S. 380 (1979) and *Stanley v. Illinois*, 405 U.S. 645 (1972). Both of these cases involved unwed mothers and unwed fathers. The Court in *Stanley* stated:

> "the private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection." *Id.* at 651.

Stanley involved an acknowledged father's efforts to prevent his children from being declared wards of the state upon the death of their mother with whom Stanley had intermittently lived for 18 years. At the time of conception and birth of the children, the mother was unmarried, as was Stanley. Unlike the case at bar, no presumption of legitimacy was involved.

Petitioner cites *Rivera v. Minnich*, 483 U.S. 574 (1987), *Mills v. Habluetzel, supra*, and *Clark v. Jeter*, 486 U.S. 456 (1988), as standing for the proposition that the 6 year Statute of Limitations results in an unconstitutional burden on Petitioner to file his claim to illegitimate a child. Close examination of these cases reveals that all involve

claims of illegitimate children for the declaration of paternity and for support. The pronouncements in these cases have little to do with the case at bar. One can understand that 6 years would be an unconstitutional burden on the mother or an illegitimate child to establish a paternity claim against a putative father. We do not have that situation in this case.

Petitioner further cites *Karenina By Vronsky v. Presley*, 526 So.2d 518 (Miss. 1988) as an example of unwed parents developing their own informal and, in many cases, workable custody, visitation and support arrangements. It should be noted that in the *Karenina* case the putative father filed suit as next friend of the child and within 6 years of the birth of the child. Furthermore, the putative father proved that the man the natural mother was married to at the time of conception was in a foreign country and had no access to the mother. These facts have no application to the case at bar.

CONCLUSION

For these reasons, this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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